



## STATE OF NEW JERSEY

### Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

[www.bpu.state.nj.us](http://www.bpu.state.nj.us)

### TELECOMMUNICATIONS

IN THE MATTER OF THE JOINT VERIFIED)  
PETITION OF LEVEL 3 )  
COMMUNICATIONS, INC. AND TELCOVE, )  
INC. FOR APPROVAL OF A TRANSFER )  
OF CONTROL OF TELCOVE )  
INVESTMENT, LLC AND RELATED )  
TRANSACTIONS )

### ORDER OF APPROVAL

DOCKET NO. TM06050346

(SERVICE LIST ATTACHED)

### BY THE BOARD:

On May 10, 2006, Level 3 Communications, Inc. (Level 3) and TelCove, Inc. (collectively, Petitioners), pursuant to N.J.S.A. 48:2-51.1, filed a petition with the Board of Public Utilities (Board) requesting the approval of an indirect transfer of control, whereby Level 3 will acquire indirect control of TelCove Investment, LLC (TelCove-OP) (TelCove, Inc. and TelCove-OP, collectively, TelCove) and for the approval for related financing transactions. Upon consummation of the transfer, TelCove-OP will become an indirect subsidiary of Level 3 and continue to offer services on the same terms, rates and conditions that it currently provides such services in the State.

### BACKGROUND

Level 3 is a publicly traded Delaware corporation with its principal business offices located in Broomfield, Colorado. Through its subsidiaries, Level 3 Communications, LLC, (Level 3 LLC), WilTel Communications, LLC, WilTel Local Network, LLC (collectively, the Level 3-Ops), Level 3 provides voice and data services to carriers, ISPs, and other business customers over its IP-based network. The Level 3-Ops are authorized to provide resold and/or facilities-based telecommunications services nationwide pursuant to certification, registration or tariff requirements, or on a deregulated basis. In New Jersey, Level 3 is authorized to provide resold and facilities-based local exchange and interexchange telecommunications services throughout New Jersey based upon authorization issued by the Board on October 20, 1998. See I/M/O the verified petition of Level 3 Communications, LLC for Authority to Provide Switched and Dedicated, Resold, and Facilities-Based, Local Exchange and Interexchange Telecommunications services throughout New Jersey, Docket No. TE97120913. Level 3 has approximately 204 customers in New Jersey, and a total of 16 employees in New Jersey. WilTel Communications, LLC and WilTel Local Network, LLC are indirect subsidiaries of Level 3 LLC.

In New Jersey WilTel Communications, LLC is authorized to provide interexchange telecommunications services pursuant to a certificate granted by the Board in Docket No. TE98080699 on September 4, 1998 at Docket No. TE98080699.<sup>1</sup> WilTel Local Network, LLC is authorized to provide competitive local exchange and exchange access services pursuant to a Board Order issued in Docket No. TE991108833 on September 12, 2000.<sup>2</sup> Together WilTel Communications, LLC and WilTel Local Network, LLC have approximately 8 customers in New Jersey.

TelCove, Inc. is a privately held Delaware corporation with its principal place of business located in Canonsburg, Pennsylvania. TelCove, Inc. is the parent company of TelCove-Op, which is a Delaware limited liability corporation with the same principal place of business. In New Jersey, TelCove-Op is authorized to provide local exchange and interexchange telecommunications services pursuant to authority granted by the Board in BPU Docket Nos. TM97110843, TE9705037, TM 98101156 and TM00040275.<sup>3</sup> TelCove-Op is also authorized by the FCC to provide domestic interstate services as a non-dominant carrier. As of February, 2006, TelCove-Op had approximately 200 customers in New Jersey. At the present time TelCove has a total of 27 employees in New Jersey.

## DISCUSSION

According to the petition, as per the Agreement and Plan of Merger, Level 3 will acquire control of TelCove-Op through a multi-step transaction beginning with a merger between TelCove, Inc. and Eldorado Acquisition Three, LLC ("Eldorado"), a subsidiary of Level 3 created specifically for the purposes of this transaction. First, TelCove, Inc. will merge into Eldorado, with Eldorado surviving. Level 3 will then immediately contribute the membership interests in Eldorado to Level 3 Financing, which will then contribute the membership interests to Level 3 LLC, positioning Eldorado as a subsidiary of Level 3 LLC. Following this step, Eldorado will change its name ("New TelCove"). As a result of these steps (which will occur virtually simultaneously), Level 3 will control TelCove-Op through its wholly owned indirect subsidiary Level 3 LLC, which will wholly own New TelCove, TelCove-Op's new direct parent. The petition states that Level 3 expects to use a combination of cash, shares of stock in Level 3, and the assumption of certain TelCove debt to acquire TelCove. Of the contemplated purchase price of \$1.2375 billion, approximately \$445 million will be paid in cash, approximately \$637 million will be paid through the issuance of stock by Level 3, and approximately \$155.5 million will be paid through the assumption of debt of TelCove. At closing, Level 3 will pay all of TelCove's debt.

Petitioners also state that the transaction described herein will serve the public interest by fostering the development of a more dynamic telecommunications marketplace in New Jersey. The proposed transaction is also in the public interest in that, once completed, it will provide TelCove-Op access to Level 3's substantial technical and management expertise, financial resources and complementary suite of services. Together, these benefits are expected to strengthen TelCove-Op's ability to expand its offerings and provide more advanced telecommunications services to a broader customer base in New Jersey. Petitioners state that

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1 This authority was originally granted to Williams Communications, Inc. d/b/a Vyvx, Inc. By letter dated November 13, 2002, the company notified the Board of the name change to WilTel-Comm.

2 This authority was originally granted to Williams Local Network, Inc. By letter dated November 13, 2002, the company informed the Board of the name change to WilTel-LN.

3 TelCove-Op filed to change its name to TelCove Investment, LLC in BPU Docket Nos. TT04050370, TT04050371 and TT04050372.

the transaction will be transparent to TelCove-Op's customers and that they will continue to offer the same services with no change in the rates or terms and conditions of service. Further, with regard to employees, the Petitioners state that they do not currently have plans that are expected to affect TelCove's New Jersey employees immediately following the transaction. Finally, TelCove's New Jersey employees will be offered benefits that will be equivalent to those they presently receive.

### FINDINGS AND CONCLUSIONS

After a thorough review of the petition and all related documents, the Board concludes that there will be neither a negative impact on service quality to New Jersey customers or the rates they pay nor a negative impact on competition. Likewise, there will be no negative impact upon employees in the State. Moreover, a positive benefit may be expected from the strengthening of the Petitioners' competitive posture in the telecommunications market.

Accordingly, after careful review of this matter, the Board FINDS that the transaction will have no negative impact on competition, the rates of current customers, or on employees. The Board also FINDS that the proposed transactions will have no negative impact on the provision of safe, adequate and proper service, and will positively benefit competition. Therefore, the Board, after investigation, having considered the record and exhibits submitted in this proceeding, FINDS that the action proposed to be taken by Petitioners is in accordance with law and in the public interest. The Board HEREBY ORDERS that Petitioners shall notify the Board of the closing of the proposed transaction promptly upon consummation. The Board FURTHER ORDERS that the approval in this Order shall become null and void and of no effect to the extent it has not been exercised prior to January 31, 2007.

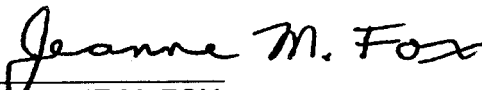
The Board has reviewed the financing transactions proposed to be taken by the Petitioners and concludes that the financing arrangements are necessary and appropriate. Further, the Board FINDS that the financing transactions described above will serve the public interest in promoting competition among telecommunications carriers in New Jersey. The Board HEREBY APPROVES and AUTHORIZES Petitioners to participate in the financings as described above.

This Order is issued subject to the following provisions:

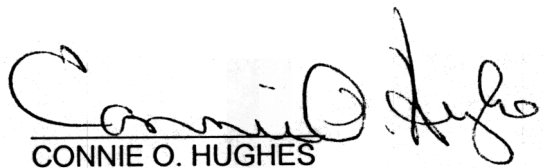
1. This Order shall not affect or in any way limit the exercise of the authority of the Board or of the State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting the Petitioners.
2. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents, a default or assignment under such agreement does not constitute an automatic transfer of Petitioners' assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.
3. This order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by Petitioners.

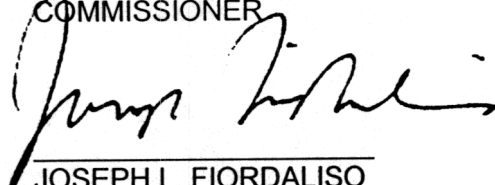
DATED: 7/21/06

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

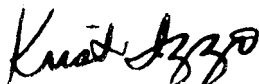
  
FREDERICK F. BUTLER  
COMMISSIONER

  
CONNIE O. HUGHES  
COMMISSIONER

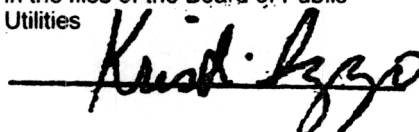
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
CHRISTINE V. BATOR  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities



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